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17 Attorneys for Plaintiff
 18 FACEBOOK, INC.

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 SAN JOSE DIVISION

22 FACEBOOK, INC.,

23 Plaintiff,

24 v.

25 ADAM GUERBUEZ; ATLANTIS BLUE
 26 CAPITAL; AND DOES 1-25,

27 Defendant.

28 C08 03889

Case No.

COMPLAINT FOR

JF

HRL

(1) VIOLATIONS OF THE CAN-SPAM ACT

(2) VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT

(3) VIOLATIONS OF CALIFORNIA PENAL CODE SECTION 502

(4) VIOLATIONS OF THE ELECTRONIC COMMUNICATION PRIVACY ACT

(5) BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

28

1 Plaintiff Facebook, Inc. alleges against Defendants Adam Guerbuez, Atlantis Blue Capital
 2 and Does 1-25 inclusive (collectively, the "Defendants"), as follows:

3 INTRODUCTION

4 1. This case arises from Defendants' improper and illegal accessing of Facebook's
 5 computers and user information to conduct vast spamming campaigns targeted at Facebook users.

6 2. Facebook's website is an extremely popular social utility that connects people with
 7 friends and others who work, study and live around them. Since its inception in 2004, Facebook
 8 has experienced exceptional growth. It now has over 90 million active users worldwide.

9 Facebook's popularity can be attributed, in part, to the methods of communication available to
 10 Facebook users. Facebook allows its users to join networks and to establish connections with
 11 other users by becoming "friends." Facebook users can take advantage of sophisticated privacy
 12 options that allow them to control the dissemination of their information among their friends or
 13 within their networks. Users can also communicate with their friends and other registered users
 14 of the site using internal Facebook messaging.

15 3. Facebook is dedicated to protecting the privacy and security of its users. Due to its
 16 rapid success and widespread popularity, Facebook has become the target of internet spammers
 17 and marketers, such as Defendants. Facebook has been very successful at minimizing spam
 18 through vigilant security measures and effective early detection of potential spammers before
 19 they have the opportunity to execute spam campaigns. Despite the resources dedicated to spam
 20 eradication, current available technology does not permit Facebook to completely prevent the
 21 transmission of spam on its site.

22 4. On information and belief, in order to facilitate their spamming campaign,
 23 Defendants acquired Facebook login information from numerous Facebook users who revealed
 24 their login information to fraudulent Facebook look-alike websites unaffiliated with and not
 25 controlled by Facebook, and through other deceptive practices. Spammers establish websites of
 26 this sort for the sole purpose of acquiring (or "phishing") Facebook user login information.
 27 Defendants used illegally obtained Facebook user login information to access the phished
 28 accounts and send spam messages to Facebook users' friends.

5. Facebook has been damaged as a result of Defendants' unlawful actions. Through this lawsuit, Facebook seeks injunctive and other forms of relief, including but not limited to damages (compensatory, aggravated and punitive), disgorgement of the proceeds of Defendants' actions and reasonable attorneys' fees.

PARTIES

6. Facebook, Inc. is a Delaware corporation with its principal place of business at 156 University Avenue, Palo Alto, California. Facebook operates servers in and/or from California and has done so since June 2004.

7. Plaintiff is informed and believes and thereupon alleges that Defendant Adam Guerbuez is a citizen of Canada residing at 7739 A Thibert Street, Lasalle, Montréal, Quebec Canada H8N 2C5 and/or 7485 Bourdeau Terrasse, Lasalle, Montréal Quebec, Canada H8N 2K9 with his parents. On information and belief, Adam Guerbuez is the sole or primary beneficial owner of Atlantis Blue Capital and the website Ballervision.com.

8. Plaintiff is informed and believes and thereupon alleges that Defendant Atlantis Blue Capital is an alias, alter ego, or fictitious business name used by Defendant Adam Guerbuez when registering certain of his Internet domain names, some of which have been used to further the acts and omissions complained of herein. When registering domains, Atlantis Blue Capital lists the physical address "Ave Manuel Maria Icaza y Calle 51, Edificio Magna Corp, Piso 5, Oficina 511, Panama City, Panamá, 51, PA," telephone contact +001.8888888888 and email address atlantisbluecapital@gmail.com.

9. Plaintiff has not yet fully and independently identified the true names and capacities of the Defendants sued herein as Does 1-25, inclusive, and therefore sues those Defendants by such fictitious names. Plaintiff reserves the right to amend this complaint to allege such Defendants' true names and capacities when they are ascertained. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously designated Defendants has been acting as a partner, contractor, joint venturer, agent, or employee of one or more of the named Defendants and that each is jointly and severally responsible for the acts and omissions complained of herein.

JURISDICTION AND VENUE

10. This is a civil action for violations of the CAN-SPAM Act, 15 U.S.C. § 7701 et seq., the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, California Penal Code § 502(c), the Electronic Communication Privacy Act, 18 U.S.C. § 2701 et seq. and breach of contract.

11. The Court has jurisdiction over the CAN-SPAM Act, Computer Fraud and Abuse Act and Electronic Communication Privacy Act claims under 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1337.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), 1391(c). The cause of action arose, and the injuries described herein occurred primarily or wholly within, the County of Santa Clara. On information and belief the wrongful acts causing such injuries were initiated at various times from Canada and other locations directed at persons and equipment in California.

13. Jurisdiction and venue are also proper in this Court pursuant to California Penal Code § 502(j), which states: "For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction."

14. During all relevant times herein, Plaintiff has operated its website, www.facebook.com, from offices located in California and servers located primarily in California. Plaintiff is informed and believe that Defendants were and are aware that www.facebook.com operated from California during all relevant times herein.

15. During all relevant times herein, Defendants have repeatedly and intentionally accessed Facebook servers located in California. Defendants have maintained systematic and continuous contacts with California while engaging in the email and Internet related violations set forth in this complaint. Defendants have targeted their wrongful acts at Facebook, which is headquartered in Palo Alto, California, and its computer network and servers present in this judicial district. On information and belief, during all relevant times herein, Defendants were aware that their wrongful acts would harm Facebook and its computer network in California.

16 During all relevant times herein, Defendants have repeatedly used their unlawful

1 access to Facebook servers to market products, without authorization, to California residents.

2 17. Through their use of Facebook's website and service and their direct or indirect
3 use of registered Facebook User's accounts, Defendants have consented to venue and jurisdiction
4 in the state and federal courts of California.

5 **FACEBOOK AND ITS ONLINE COMMUNITY**

6 18. Facebook operates an extremely popular interactive computer service that enables
7 social networking on the Internet. Anyone who is thirteen years of age or older may register to
8 use Facebook.

9 19. Facebook user accounts are maintained on servers owned and operated by
10 Facebook and located primarily in California. Access to these servers is governed by Facebook's
11 Terms of Use.

12 20. Only registered users are permitted to use Facebook's site and services. To
13 become a registered user, one must provide unique login information in the form of an email
14 address and password. These credentials provide a secure way for users to access their Facebook
15 account.

16 21. Once registered, users create personalized custom webpages or profiles. Profiles
17 typically include personal information, contact information, photographs, and content related to
18 their interests.

19 22. Users may then make personal connections by inviting other users to become their
20 friend or by accepting friend invitations from other users. A list of friends, and certain
21 communications with those friends, become part of the user's profile.

22 23. Facebook users can separately control access to every category of information in
23 their profile by taking advantage of Facebook's granular privacy controls. For each category of
24 information, users may choose to give access only to their friends, to friends of friends, to their
25 networks, or to some custom subset of these groups of users. These privacy options are a
26 valuable part of Facebook and have contributed to Facebook's popularity and success.

27 24. Secure communication between Facebook users is vital to Facebook's success.
28 Facebook provides a number of internal communication services, including electronic messaging,

1 chat, comments and "the Wall" (a type of bulletin board). Only registered Facebook users are
2 permitted to use these communication systems.

3 25. Electronic messages and Wall postings are the most attractive to spammers
4 because both allow messages to be sent to or seen by multiple Facebook users at the same time.
5 Thus, through these methods of communication, a wider audience can be reached with fewer
6 communications.

7 26. Registered users can initiate electronic messages in three ways: a) when viewing
8 another user's profile, by selecting the "Send a Message" button under a user's profile picture; b)
9 by selecting "Send a Message" from the right side of any search results screen; or c) by selecting
10 "Compose" from the user's own Inbox and typing in the name of friends the user would like to
11 message. A user can send messages to up to twenty people at once if the recipients are friends, or
12 the sender has the recipients' email addresses. If a user wants to message any user who is not a
13 friend, they are only permitted to do so individually. Users may also use Facebook's privacy
14 settings to prevent anyone other than friends from sending them messages. These electronic
15 messages may only be viewed by the recipients to whom they are directed.

16 27. Registered users can also send an electronic message to another user by posting the
17 message on the user's Wall (a "Wall post"). However, users may only post messages on the
18 Walls of those users with whom they are friends. A user's Wall is visible to anyone who can see
19 the user's profile. A Wall post displays the message along with message headers showing the
20 sender's profile name and picture.

21 28. Thus, a spammer who fraudulently accesses a Facebook user account is able to
22 send spam in the form of electronic messages from that account. Each of those messages can be
23 directed to up to twenty of the user's friends. The spammer may also send spam in the form of
24 Wall posts to each of the user's friends. Those Wall posts can be read by anyone able to view the
25 profiles of those friends who received the spam Wall posts.

26 29. As described above, an important aspect of Facebook is that its users generally
27 interact with and receive communications only from their friends. Users have complete control
28 over who they choose to interact with. As such, Facebook users do not expect to receive – and

1 should not receive – unsolicited, unauthorized commercial communications (i.e. spam) from other
2 Facebook users or from non-users. Indeed, Facebook's Terms of Use explicitly prohibit any
3 unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam,"
4 "chain letters," "pyramid schemes," or any other form of solicitation.

5 30. Facebook's security, user operations and legal departments expend significant time
6 and resources addressing and minimizing abuse of the Facebook website and addressing
7 violations of Facebook's Terms of Use – including phished users accounts and unauthorized
8 distribution of spam.

FACEBOOK TERMS OF USE

9 31. Anyone who accesses or uses Facebook's web site at www.facebook.com must
10 signify that they have read, understand and agree to be bound by Facebook's Terms of Use,
11 whether or not they are a registered user of Facebook. See attached Exhibit A (Facebook's Terms
12 of Use, also available at <http://www.facebook.com/terms.php>). Only those individuals who agree
13 to Facebook's Terms of Use are authorized to access or browse Facebook's website. In order to
14 use Facebook's communication systems or view other user's Facebook profiles, visiting users
15 must register and click to indicate that they have read and agree to Facebook's Terms of Use and
16 Privacy Policy.

17 32. Facebook's Terms of Use explicitly prohibit spam communications on Facebook.
18 Facebook's Terms of Use and Privacy Policy prohibit all commercial use of its website except as
19 explicitly authorized by Facebook.

20 33. Facebook's Terms of Use require its users to, among other things, agree not to use
21 the Service or the Site to:

22

- 23 • harvest or collect email addresses or other contact information of other users from the
24 Service or the Site by electronic or other means for the purposes of sending unsolicited
25 emails or other unsolicited communications;
- 26 • use the Service or the Site in any unlawful manner or in any other manner that could
27 damage, disable, overburden or impair the Site;
- 28 • use automated scripts to collect information from or otherwise interact with the
Service or the Site;
- register for more than one user account, register for a user account on behalf of an
individual other than yourself, or register for a user account on behalf of any group or
entity;

- impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, 'junk mail,' 'spam,' 'chain letters,' 'pyramid schemes,' or any other form of solicitation;
- solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site;
- upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type.

34. Defendant Guerbuez has been a registered user of Facebook since at least May 19, 2007.

DEFENDANTS' UNLAWFUL CONDUCT

35. During March and April 2008, Guerbuez (and on information and belief his associates and accomplices) caused the transmission of over 4 million spam messages to Facebook users through Facebook's network. On information and belief, this unsolicited spam was sent to and received by Facebook users in California. Defendants' acts of accessing Facebook's data, computers systems and/or networks and sending spam messages occurred without Facebook's authorization and were conducted in express violation of Facebook's Terms of Use. Through their illicit and illegal internet marketing schemes, Defendants have caused harm to Facebook and its users.

36. On information and belief, Defendants fraudulently gained access to legitimate Facebook user accounts, either by misappropriating their login information through a phishing website or other method, and/or by acquiring login information from one or more third parties.

37. On information and belief, Defendants used computer programs called "scripts" or "bots" to log in to these compromised Facebook users accounts housed on Facebook's computers and computers systems.

38. On information and belief, Defendants directed servers under their control and/or a computer "botnet" (a series of compromised third party computers) to send spam to Facebook users in the form of electronic messages and/or Wall posts. These spam messages were sent to

1 friends of users with compromised accounts without the users' knowledge or authorization.
2 Users who received these spam messages also had their accounts compromised by Defendants
3 who circumvented privacy settings that prevent messages from being received from sources other
4 than those users' confirmed friends. Defendants' messages would not have been able to reach
5 those users had they not originated from their friends' accounts.

6 39. Spam, in the form of Wall posts, persisted on the profiles of users who received
7 the spam. These Wall posts showed advertising and/or purported Facebook user endorsement of
8 products to all who were able to view these users' profiles.

9 40. The spam promoted numerous products and websites that, on information and
10 belief, are offensive and embarrassing to a large segment of the Facebook users who received or
11 viewed these messages, or whose accounts were fraudulently used to send these messages. The
12 products marketed by these spam messages included marijuana, male enhancement pills, and
13 sexually oriented material.

14 41. While most spam is easily identified as spam and often ignored by recipients,
15 Defendants' spam attacks were more likely to be successful because Defendants used stolen
16 account information resulting in false message headers indicating that the spam messages were
17 personal endorsements of products sent by their Facebook friends. Additionally, the spam
18 messages were written in a misleading way so as to appear to be personal messages from friends.
19 Defendants' spam messages did not provide any clear or conspicuous notice that the messages
20 were advertisements, did not provide information on how recipients could opt-out of future
21 messages, and did not provide a valid postal address that recipients could use to contact
22 Defendants.

23 42. Defendants used these spam messages to advertise a number of websites, some of
24 which are owned by Defendants and some of which are owned by third parties who, on
25 information and belief, paid Defendants to drive traffic to their websites, including:
26 budhookup.com, bomivo.com (LNH Solutions penis enlargement), pilinak.com, classy-
27 shoes.com, shoes-styled.com, abutty.com, msanes.com, vulkam.com, ofbods.com (MaxHerbal
28 penis enlargement) and zvyloo.com.

43. The voluminous and illicit nature of Defendants' advertisements has tainted the Facebook experience for affected Facebook users.

44. Facebook has suffered significant harm to its reputation and goodwill due to Defendants' actions. Facebook has suffered economic damages, as well. Facebook has expended significant time and money monitoring, reviewing and attempting to prevent and eradicate Defendants' spam emails and Wall posts.

45. On information and belief, Defendants willfully and maliciously engaged, and continue to engage, in: a) unauthorized access to and appropriation of Facebook data, information, computers, computers systems and networks, and b) sending of unsolicited commercial messages. Defendants have and continue to pursue these unlawful acts in order to defraud Facebook users and reap the monetary rewards from their illegal and improper phishing and spamming campaigns.

46. Defendants have benefited financially from their behavior while at the same time harming Facebook.

47. Each of the Defendants had knowledge of the other Defendants' unlawful actions and authorized and/or directed them to take the actions described in this Complaint on the other Defendants' behalf.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE CAN-SPAM ACT

48. Facebook realleges and incorporates herein by reference the allegations in paragraphs 1-47 as if set forth fully herein.

49. Facebook is a provider of internet access services. Facebook enables users to access content, electronic messaging and other internet services through its website.

50. Defendants initiated the transmission of commercial electronic mail messages through Facebook's computers to Facebook users' computers, both of which are used in interstate and/or foreign commerce and communication.

51. Defendants intentionally and materially misled recipients of the spam

1 advertisement messages as to the true identity of the senders.

2 52. Defendants acquired Facebook user login information in a fraudulent manner,
3 either by phishing the information themselves or acquiring it from third parties, for the purposes
4 of initiating spam messages.

5 53. Defendants initiated the transmission of spam messages through Facebook's
6 computers with actual knowledge, or knowledge fairly implied on the basis of objective
7 circumstances, that the message headers would be likely to mislead the recipients about a material
8 fact regarding the contents or subject matter of the messages. Among other things, Defendants'
9 messages included headers that did not indicate: a) that the Defendants sent them, b) that the
10 messages were advertisements that were not endorsed by the senders whose names and pictures
11 were displayed in the header, or c) that the messages were not initiated by the sender from whom
12 they appeared to be initiated.

13 54. Defendants' spam messages were sent as part of a systematic pattern and practice
14 that did not conspicuously display a return electronic mail address to which the recipients could
15 submit a reply requesting that no further commercial emails be sent to the recipient.

16 55. Defendants' spam messages did not provide: a) clear and conspicuous
17 identification that the messages were advertisements or solicitations, b) clear and conspicuous
18 notice that the recipients had the right to opt-out of future messages, or c) valid physical addresses
19 of the actual senders of the messages.

20 56. Some of Defendants' spam messages contained sexually oriented material and
21 links to websites containing sexually oriented material.

22 57. Facebook has been adversely affected by Defendants' violations. As a direct and
23 proximate cause of Defendants' conduct, Facebook has sustained damages in an amount to be
24 determined at trial.

25 58. By reason of Defendants' conduct, Facebook has suffered, is suffering, and will
26 continue to suffer irreparable harm and, unless Defendants are enjoined, the irreparable harm to
27 Facebook will continue. Facebook has no adequate remedy at law.

28 59. On information and belief, Defendants' actions were willful and knowing, entitling

1 Facebook to aggravated damages in accordance with 15 U.S.C. § 7706(g)(3)(C).

2 **SECOND CLAIM FOR RELIEF**

3 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

4 (18 U.S.C. § 1030)

5 60. Facebook realleges and incorporates herein by reference the allegations in
6 paragraphs 1-59.

7 61. Defendants knowingly and intentionally accessed Facebook's computers without
8 authorization or in excess of any authorization. Defendants were not authorized to log into and
9 use Facebook users accounts belonging to other individuals. Defendants were not authorized to
10 access Facebook computer servers inconsistent with the terms set forth in Facebook's Terms of
11 Use, which Defendants violated by (among other things): soliciting of Facebook users' login
12 information; using automated scripts to collect information from, or otherwise interact with, the
13 Facebook website; uploading, posting, transmitting, sharing or otherwise making available any
14 unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam,"
15 "chain letters," "pyramid schemes," or any other form of solicitation; using the Facebook service
16 or site for commercial purposes, except under advertising programs offered by Facebook;
17 incorporating any Facebook site content or information in any other database or compilation; and
18 using or attempting to use another person's Facebook account without authorization from
19 Facebook.

20 62. After gaining unauthorized access to the Facebook servers, Defendants obtained
21 and used valuable information from Facebook's protected computers in transactions involving an
22 interstate or foreign communication. This information included, among other things, Facebook
23 users' friend lists and the means of communicating with those friends. The use included sending
24 unauthorized messages from Facebook user accounts without authorization and penetrating user
25 accounts that would not have accepted Defendants' messages had the messages not originated
26 from the accounts of their confirmed friends.

27 63. Thus, Defendants knowingly, willfully and with an intent to defraud accessed
28 Facebook's computers without authorization or in excess of any authorization and obtained

1 valuable information from Facebook's computers, which, on information and belief, Defendants
 2 used to obtain something of value.

3 64. Defendants knowingly, willfully and with an intent to defraud trafficked in login
 4 information through which computers were accessed without authorization, affecting interstate
 5 commerce.

6 65. Defendants' conduct has caused a loss to Facebook during a one-year period
 7 aggregating at least \$5,000.

8 66. Facebook has suffered damages resulting from Defendants' infringing conduct.
 9 Facebook seeks compensatory and punitive damages under 18 U.S.C. § 1030(g) in an amount to
 10 be proven at trial.

11 67. By reason of Defendants' conduct, Facebook has suffered, is suffering, and will
 12 continue to suffer irreparable harm and, unless Defendants are enjoined, the irreparable harm to
 13 Facebook will continue. Facebook has no adequate remedy at law.

14 **THIRD CLAIM FOR RELIEF**

15 **VIOLATION OF THE CALIFORNIA PENAL CODE §502**

16 68. Facebook realleges and incorporates herein by reference the allegations in
 17 paragraphs 1-67 as if set forth fully herein.

18 69. Defendants knowingly and without permission altered, damaged, destroyed, or
 19 used Facebook's data, computer, computer system, or computer network to defraud or deceive or
 20 to wrongfully control or obtain money, property, or data in violation of California Penal Code
 21 §502(c)(1).

22 70. Defendants knowingly and without permission accessed and took, copied, or used
 23 data from Facebook's computer, computer systems, or computer network in violation of
 24 California Penal Code §502(c)(2)

25 71. Defendants knowingly and without permission accessed and used the Facebook
 26 services in violation of California Penal Code §502(c)(3).

27 72. Defendants knowingly and without permission added, altered, deleted, or
 28 destroyed data that resided in Facebook's computer, computer systems, or computer network in

1 violation of California Penal Code §502(c)(4).

2 73. Defendants knowingly and without permission accessed, or caused to be accessed,
 3 Facebook's computers, computer system, and/or computer network in violation of California
 4 Penal Code §502(c)(7).

5 74. Pursuant to California Penal Code §502(e)(1), Facebook seeks compensatory
 6 damages, in an amount to be proven at trial, and injunctive relief for its damages and loss suffered
 7 by Defendants' violations of Facebook's computers and network, including the reasonable and
 8 necessary expenditures incurred by Facebook to verify that its data, computers, systems, and
 9 network were not damaged, altered or deleted by Defendants' unlawful access.

10 75. As a direct result of Defendants' actions, Facebook has suffered and continues to
 11 suffer irreparable harm for which Facebook has no adequate remedy at law, and which will
 12 continue unless Defendants' actions are enjoined.

13 76. Facebook is also entitled to recover its reasonable attorneys' fees pursuant to
 14 California Penal Code §502(e)(2).

15 77. On information and belief, Defendants' actions were willful and malicious, and
 16 Facebook is therefore entitled to punitive damages pursuant to California Penal Code §502(c)(4).

17 **FOURTH CLAIM FOR RELIEF**

18 **VIOLATIONS OF THE ELECTRONIC COMMUNICATION PRIVACY ACT**

19 (18 U.S.C. § 2701 *et seq.*)

20 78. Facebook realleges and incorporates herein by reference the allegations in
 21 paragraphs 1-77 as if set forth fully herein.

22 79. Facebook's computers and servers are facilities through which electronic
 23 communication services are provided to its users.

24 80. By using fraudulently acquired Facebook user login information, the Defendants
 25 knowingly and intentionally accessed Facebook's computers and servers without authorization or
 26 in excess of any authorization granted by the Facebook Terms of Use contract.

27 81. Through this unauthorized access, Defendants had access to, obtained, altered,
 28 and/or prevented Facebook users' legitimate, authorized access to wire electronic

1 communications, including but not limited to Facebook electronic messages or Wall post services
2 while they were in electronic storage in the Facebook system.

3 82. Facebook users' detailed profiles and electronic communications are not readily
4 accessible to the general public. Facebook users' Wall post electronic communications are not
5 accessible to the general public or other Facebook users unless and until a Facebook user
6 authorizes or permits such access to their individual account.

7 83. By reason of Defendants' conduct, Facebook has suffered, is suffering, and will
8 continue to suffer irreparable harm and, unless Defendants are enjoined, the irreparable harm to
9 Facebook will continue. Facebook has no adequate remedy at law.

10 **FIFTH CLAIM FOR RELIEF**

11 **BREACH OF CONTRACT**

12 84. Facebook realleges and incorporates herein by reference the allegations in
13 paragraphs 1-83 as if set forth fully herein.

14 85. All Facebook users, including the Defendants, are parties to Facebook's Terms of
15 Use contract or are bound to the Terms of Use through their actions. Defendant Guerbuez
16 registered and agreed to Facebook's Terms of Use.

17 86. Facebook has performed all of its obligations under the terms and conditions of the
18 Agreement, except those for which performance has been excused.

19 87. Defendants have breached Facebook's Terms of Use contract by, among other
20 things: soliciting of Facebook users' login information; using automated scripts to collect
21 information from, or otherwise interact with, the Facebook website; uploading, posting,
22 transmitting, sharing or otherwise making available any unsolicited or unauthorized advertising,
23 solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or
24 any other form of solicitation; using the Facebook service or site for commercial purposes, except
25 under advertising programs offered by Facebook; incorporating any Facebook site content or
26 information in any other database or compilation; and using or attempting to use another person's
27 Facebook account without authorization from Facebook.

28 88. As a direct and proximate cause of Defendants' breach of contract, Facebook has

1 sustained damages in an amount to be determined at trial.

2 **PRAYER FOR RELIEF**

3 Wherefore, Facebook prays for relief as follows:

4 1. That Defendants and their agents, servants, employees, attorneys, affiliates,
5 distributors and any other persons in active concert or participation with them be temporarily,
6 preliminarily, and permanently enjoined from:

7 a. making any unauthorized use of, or gaining unauthorized access to,
8 Facebook's data, information, computers, computers systems, computer networks, or Facebook
9 users' information or profiles;

10 b. retaining any copies, electronic or otherwise, of any Facebook user
11 login information;

12 c. using Facebook's computers or accounts to cause, directly or
13 indirectly, commercial emails, Wall post bulletins, or messages of any kind to be transmitted;

14 d. violating, or encouraging or facilitating Facebook users' violations
15 of, Facebook's Terms of Use, and;

16 e. accessing Facebook's data, information, computers, computer
17 systems or network, or Facebook user accounts for any reason whatsoever;

18 2. That Defendants be directed to file with the Court and serve upon counsel
19 for Facebook within thirty days after entry of judgment a report in writing under oath setting forth
20 in detail the manner and form in which Defendants have complied with the requirements of the
21 injunction, the login names and unique membership information of all compromised Facebook
22 accounts, and all known contact information for the persons or entities from whom the
23 Defendants acquired Facebook user account login information;

24 3. That Defendants be directed to file with the Court and serve upon counsel
25 for Facebook within thirty days after entry of judgment a report in writing under oath setting forth
26 in detail an accounting of any and all sales, revenues, profit sharing or kick-back payments
27 Defendants made, obtained or distributed as a result of their actions in violation of Facebook's
28 rights described herein;

1 4. For damages according to proof, including liquidated and statutory
2 damages;
3 5. For disgorgement of any money, property, profits or the value of any other
4 economic benefit that Defendants have received as a result of their unlawful conduct;
5 6. For aggravated damages;
6 7. For punitive damages;
7 8. For interest as allowed by law;
8 9. For costs of suit, including reasonable attorneys' fees;
9 10. For such other relief as the Court deems just and proper.

10 **JURY DEMAND**

11 Plaintiff hereby demands a trial by jury for all issues which may be tried by jury.

14 Dated: August 14, 2008

I. NEEL CHATTERJEE
THOMAS GRAY
P. WAYNE HALE
Orrick, Herrington & Sutcliffe LLP

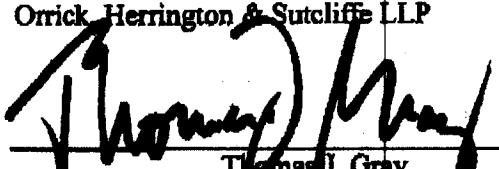

Thomas J. Gray
Attorneys for Plaintiff
FACEBOOK, INC.

EXHIBIT A

[Profile](#) [edit](#) [Friends](#) [Inbox](#)

[Home](#) [Account](#) [Privacy](#) [Logout](#)

Search

[edit](#)

Date of Last Revision: June 7, 2008

Terms of Use

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PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AND A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW DISPUTES WILL BE RESOLVED.

Eligibility

Membership in the Service is void where prohibited. This Site is intended solely for users who are thirteen (13) years of age or older, and users of the Site under 18 who are currently in high school or college. Any registration by, use of or access to the Site by anyone under 13, or by anyone who is under 18 and not in high school or college, is unauthorized, unlicensed and in violation of these Terms of Use. By using the Service or the Site, you represent and warrant that you are 13 or older and in high school or college, or else that you are 18 or older, and that you agree to and to abide by all of the terms and conditions of this Agreement.

Registration Data; Account Security

In consideration of your use of the Site, you agree to (a) provide accurate, current and complete information about you as

may be prompted by any registration forms on the Site ("Registration Data"); (B) maintain the security of your password and identification; (C) maintain and promptly update the Registration Data, and any other information you provide to Company, to keep it accurate, current and complete; and (D) be fully responsible for all use of your account and for any actions that take place using your account.

Proprietary Rights in Site Content; Limited License

All content on the Site and available through the Service, including designs, text, graphics, pictures, video, information, applications, software, music, sound and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of the Company, its users or its licensors with all rights reserved. No Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the Company's prior written permission, except that the foregoing does not apply to your own User Content (as defined below) that you legally post on the Site. Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and the Site Content, and to download or print a copy of any portion of the Site Content to which you have properly gained access solely for your personal, non-commercial use, provided that you keep all copyright or other proprietary notices intact. Except for your own User Content, you may not upload or republish Site Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation, and any other use of the Site Content is strictly prohibited. Such license is subject to these Terms of Use and does not permit use of any data mining, robots, scraping or similar data gathering or extraction methods. Any use of the Site or the Site Content other than as specifically authorized herein, without the prior written permission of Company, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. This license is revocable at any time without notice and with or without cause.

Trademarks

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User Conduct

You understand that except for advertising programs offered by us on the Site (e.g., Facebook Flyers, Facebook Marketplace), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no materials of any kind submitted through your account or otherwise posted, transmitted, or shared by you on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material.

In addition, you agree not to use the Service or the Site to:

- harvest or collect email addresses or other contact information of other users from the Service or the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- use the Service or the Site in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site;
- use automated scripts to collect information from or otherwise interact with the Service or the Site;
- upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, transmit, share, store or otherwise make available any videos other than those of a personal nature that: (i) are of you or your friends, (ii) are taken by you or your friends, or (iii) are original art or animation created by you or your friends;
- register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;
- impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

- intimidate or harass another;
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site;
- upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type.

Without limiting any of the foregoing, you also agree to abide by our Facebook Code of Conduct that provides further information regarding the authorized conduct of users on Facebook.

User Content Posted on the Site

You are solely responsible for the photos, profiles (including your name, image, and likeness), messages, notes, text, information, music, video, advertisements, listings, and other content that you upload, publish or display (hereinafter, "post") on or through the Service or the Site, or transmit to or share with other users (collectively the "User Content"). You may not post, transmit, or share User Content on the Site or Service that you did not create or that you do not have permission to post. You understand and agree that the Company may, but is not obligated to, review the Site and may delete or remove (without notice) any Site Content or User Content in its sole discretion, for any reason or no reason, including User Content that in the sole judgment of the Company violates this Agreement or the Facebook Code of Conduct, or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others. You are solely responsible at your sole cost and expense for creating backup copies and replacing any User Content you post or store on the Site, or provide to the Company.

When you post User Content to the Site, you authorize and direct us to make such copies thereof as we deem necessary in order to facilitate the posting and storage of the User Content on the Site. By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicensees of the foregoing. You may remove your User Content from the Site at any time. If you choose to remove your User Content, the

License granted above will automatically expire, however you acknowledge that the Company may retain archived copies of your User Content. Facebook does not assert any ownership over your User Content; rather, as between us and you, subject to the rights granted to us in these Terms, you retain full ownership of all of your User Content and any intellectual property rights or other proprietary rights associated with your User Content.

Facebook Mobile Services

The Service includes certain services that are available via your mobile phone, including (i) the ability to upload content to Facebook via your mobile phone (Mobile Uploads), (ii) the ability to receive and reply to Facebook messages, to poke and receive pokes and to write wall posts using text messaging (Mobile Texts), (iii) the ability to browse Facebook from your mobile phone (Mobile Web), and (iv) the ability to access certain Facebook features through a mobile application you have downloaded and installed on your mobile phone (Mobile Client) (collectively the "Mobile Services"). We do not charge for these Mobile Services. However, your carrier's normal messaging, data and other rates and fees will still apply. You should check with your carrier to find out what plans are available and how much they cost. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. Therefore, you should check with your carrier to find out if the Mobile Services are available for your mobile devices, and what restrictions, if any, may be applicable to your use of such Mobile Services. By using the Mobile Services, you agree that we may communicate with you regarding Facebook and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Facebook account information to ensure that your messages are not sent to the person that acquires your old number.

Copyright Complaints

We respect the intellectual property rights of others and we prohibit users from uploading, posting or otherwise transmitting on the Facebook website or service any materials that violate another party's intellectual property rights. When we receive proper notification of alleged copyright infringement as described in our Facebook Copyright Policy, we promptly remove or disable access to the allegedly infringing material and terminate the accounts of repeat infringers as described herein in accordance with the Digital Millennium Copyright Act. If you believe that any material on the Site infringes upon any copyright which you own or control, you may send a written notification of such infringement to our Designated Agent. Please see our Facebook Copyright Policy for more information on how to report infringement of your copyright.

Repeat Infringer Policy

In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances and at Company's sole discretion, members who are deemed to be repeat infringers. Company may also at its sole discretion limit access to the Site and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

Third Party Websites and Content

The Site contains (or you may be sent through the Site or the Service) links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Applications, Software or Content"). Such Third Party Sites and Third Party Applications, Software or Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Sites accessed through the Site or any Third Party Applications, Software or Content posted on, available through or installed from the Site, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Sites or the Third Party Applications, Software or Content. Inclusion of, linking to or permitting the use or installation of any Third Party Site or any Third Party Applications, Software or Content does not imply approval or endorsement thereof by us. If you decide to leave the Site and access the Third Party Sites or to use or install any Third Party Applications, Software or Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from the Site or relating to any applications you use or install from the site.

Share Service

Company offers a feature whereby users of the Site can share with others or post to their own member profile, videos, articles and other Third Party Applications, Software or Content from, and/or links to, Third Party Sites through the Service (the "Share Service"). You acknowledge and agree that your use of the Share Services and all links, User Content, or Third Party Applications, Software or Content shared through the Share Service is subject to, and will fully comply with, the user conduct rules set forth above and the other terms and conditions set forth in these Terms of Use.

Use of Share Links by Online Content Providers

Subject to the terms and conditions of these Terms of Use, Third Party Sites that meet the requirements set forth below may place a Share Link (as described below), in the form approved by Company, on pages of their web sites to facilitate use of the Share Service. A Third Party Site that posts a Share Link on its web site is referred to herein as an "Online Content Provider" and shall abide and be subject to the applicable sections of these Terms of Use. A "Share Link" is a

button and/or a text link appearing on an Online Content Provider's web page that, upon being clicked by a user, enables us to launch a sharing mechanism through which users can share with others or post to their own member profile, links and content from that page.

In the event that the Share Link is a button that contains any icons or other graphic images, trademarks or other proprietary materials of the Company, Online Content Provider is granted permission to use such images, trademarks or other materials solely for the purpose of placing the Share Link on Online Content Provider's site and solely in the current form provided by the Company. In the event that the Share Link is a text link, it must include the word "Facebook" as part of the link. The rights granted in this paragraph may be revoked by Company at any time with or without cause in its sole discretion, and upon such termination, Online Content Provider agrees to immediately remove all Share Links from its site.

In order for an Online Content Provider to include a Share Link on its pages, the Third Party Site must not contain any web content that is shared or posted by a user would be a violation of the user conduct rules set forth above. Without limiting the foregoing, Online Content Provider agrees not to post a Share Link on any web site that contains, and represents and warrants that such web site does not and will not contain, any content that is infringing, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, lewd, fraudulent, or invasive of privacy or publicity rights or that may expose Company or its users to any harm or liability of any type. Upon including of a Share Link, Online Content Provider agrees to defend, indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with such Share Link, any links, content or other items or materials which may be shared or posted through such Share Link, or any breach or alleged breach of the foregoing representations and warranties.

By including a Share Link, Online Content Provider automatically grants, and represents and warrants that it has the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use the Share Service in order to link to, use, copy, publish, stream, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), summarize, and distribute the content, links and other materials of any kind residing on any web pages on which Online Content Provider places the Share Link.

Facebook Marketplace

All listings posted on or through the Facebook Marketplace service and all transactions conducted in connection therewith are subject to and governed by the Facebook Marketplace Guidelines (the "Guidelines") as well as these Terms of Use. When you use Facebook Marketplace in any manner you are agreeing to abide by and be subject to the Guidelines and the other applicable rules set forth in these Terms of Use. The Guidelines are subject to change without prior notice at any time, in the Company's sole discretion, so you should review the Guidelines each time you use Facebook Marketplace.

Parties to a transaction are solely responsible for all interactions with each other, for arranging for payment and the exchange of the goods or services purchased if applicable, and for the results and performance of any transaction or relationship entered into through Facebook Marketplace. You acknowledge that Facebook is not responsible or liable for any action or inaction of any party to a transaction, for any failure to perform, to pay any amounts due, or to deliver any merchandise or services as promised, or for any other aspect of the transaction. Any fees or payments collected by Facebook applicable to Facebook Marketplace are set forth on the Site, and all terms and conditions applicable to such fees are set forth in the Facebook Terms of Sale. However, please note that the Terms of Sale do not apply to your purchases of products or services from third parties through Facebook Marketplace, as those transactions are strictly between you and the other party to the transaction. **ALL USE OF FACEBOOK MARKETPLACE IS PROVIDED "AS IS" AND AT YOUR OWN RISK.**

Facebook Platform Applications

The Facebook Platform is a set of APIs and services provided by Facebook that enable third-party developers ("Platform Developers") to create websites and applications that retrieve data made available by Facebook and its users and/or that retrieve authorized data from third-party sites for use on the Facebook Site ("Platform Applications").

Platform Developers may use the Facebook Platform and create Platform Applications only in accordance with the terms and conditions set forth in an agreement entered into between Facebook and the Platform Developer ("Developer Terms"). Our standard Developer Terms consist of the Facebook Developer Terms of Service and the related Facebook Platform Application Guidelines. We may from time to time enter into separate agreements with certain third party Platform Developers that contain different or additional terms, provided however, that each such separate agreement will require the third party Platform Developer to only display your information in accordance with your Facebook privacy settings. The standard Developer Terms are subject to change without prior notice at any time. In the Company's sole discretion, so you should review these documents from time to time. **ALL USE OF THE FACEBOOK PLATFORM IS PROVIDED "AS IS" AND AT YOUR OWN RISK.**

Users who install Platform Applications must agree to the terms and conditions set forth in the Platform Application Terms of Use ("Application User Terms") and in these Terms of Use. The Application User Terms are subject to change without prior notice at any time. In the Company's sole discretion, so you should review these terms each time you install an application and from time to time. Platform Developers may require you to agree to their own terms of service, privacy policies and/or other policies as a condition of using Platform Applications. Platform Applications have not been approved, endorsed, or reviewed in any manner by Facebook, and we are not responsible for your use of or inability to use any Platform Applications, including the content, accuracy, or reliability of such Application and the privacy practices or other policies of Developers. **YOU USE SUCH PLATFORM APPLICATIONS AT YOUR OWN RISK.**

If you, your friends or members of your network use any Platform Applications, such Platform Applications may access and

share certain information about you with others in accordance with your privacy settings as further described in our Privacy Policy. Platform Developers are required to agree to restrictions on access, storage and use of such information. However, while we have undertaken contractual and technical steps to restrict possible misuse of such information by such Platform Developers, we do not screen or approve Developers, and we cannot and do not guarantee that all Platform Developers will abide by such restrictions and agreements. Certain actions you take through the Platform Applications may be displayed to your friends in your profile, mini-feed and news feed, and you may opt-out of displaying your Platform Application actions on the Privacy Settings page. Please report any suspected misuse of information through the Facebook Platform as described in our Privacy Policy.

You may set your preferences for your news feed and mini-feed here.

Facebook Pages

Facebook Pages are special profiles used solely for commercial, political, or charitable purposes. You may not set up a Facebook Page on behalf of another individual or entity unless you are authorized to do so. This includes Fan Facebook Pages, as well as Facebook Pages to support or criticize another individual or entity.

FACEBOOK DOES NOT PRE-SCREEN OR APPROVE FACEBOOK PAGES, AND CANNOT GUARANTEE THAT A FACEBOOK PAGE WAS ACTUALLY CREATED AND IS BEING OPERATED BY THE INDIVIDUAL OR ENTITY THAT IS THE SUBJECT OF A FACEBOOK PAGE. NOR IS FACEBOOK RESPONSIBLE FOR THE CONTENT OF ANY FACEBOOK PAGE, OR ANY TRANSACTIONS ENTERED INTO OR OTHER ACTIONS TAKEN ON OR IN CONNECTION WITH ANY FACEBOOK PAGE, INCLUDING HOW THE OWNER OF THE FACEBOOK PAGE COLLECTS, HANDLES, USES AND / OR SHARES ANY PERSONAL INFORMATION IT MAY COLLECT FROM USER'S (PLEASE REVIEW THE FACEBOOK PRIVACY POLICY IF YOU HAVE ANY QUESTIONS OR CONCERN REGARDING THE USE OR SHARING OF YOUR PERSONAL INFORMATION). YOU SHOULD BE CAREFUL BEFORE PROVIDING ANY PERSONAL INFORMATION TO OR ENTERING INTO ANY TRANSACTION IN CONNECTION WITH A FACEBOOK PAGE.

In addition to these Terms of Use, Facebook Pages are subject to and governed by certain Additional Terms Applicable to Facebook Pages. The Additional Terms Applicable to Facebook Pages control in the event of any conflict between them and the Terms of Use.

Terms of Sale

Please refer to our Terms of Sale for the terms, conditions and policies applicable to your purchase of products or services from Company. By ordering products or services from Company through the Site, you agree to be bound by and accept the

Terms of Sale. The Terms of Sale are subject to change without prior notice at any time. In Company's sole discretion so you should review the Terms of Sale each time you make a purchase.

User Disputes

You are solely responsible for your interactions with other Facebook users. We reserve the right, but have no obligation, to monitor disputes between you and other users.

Privacy

We care about the privacy of our users. Click here to view the Facebook's Privacy Policy. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

Disclaimers

The Company is not responsible or liable in any manner for any User Content or Third Party Applications, Software or Content posted on the Site or in connection with the Service, whether posted or caused by users of the Site, by Facebook, by third parties or by any of the equipment or programming associated with or utilized in the Site or the Service. Although we provide rules for user conduct and postings, we do not control and are not responsible for what users post, transmit or share on the Site and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content you may encounter on the Site or in connection with any User Content or Third Party Applications, Software or Content. The Company is not responsible for the conduct, whether online or offline, of any user of the Site or Service.

The Site and the Service may be temporarily unavailable from time to time for maintenance or other reasons. Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft, or destruction or unauthorized access to, or alteration of, User communications. The Company is not responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers or providers, computer or mobile phone equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any Site or combination thereof, including injury or damage to User's or to any other person's computer, mobile phone, or other hardware or software, related to or resulting from using or downloading materials in connection with the Web and/or in connection with the Service, including any Mobile Client software. Under no circumstances will the Company be responsible for any loss or damage, including any loss or damage to any User Content or personal injury or death, resulting from anyone's use of the Site or the Service, any User Content or Third Party Applications, Software or Content posted on or through the Site or the Service or transmitted to Users, or any interactions between users of the Site, whether online or offline.

THE SITE, THE SERVICE (INCLUDING THE MOBILE SERVICES, THE SHARE SERVICE AND THE MARKETPLACE SERVICE), ANY PLATFORM APPLICATIONS AND THE SITE CONTENT ARE PROVIDED "AS-IS" AND THE COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE COMPANY CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SITE AND/OR THE SERVICE AND/OR ANY PLATFORM APPLICATIONS. COMPANY DOES NOT REPRESENT OR WARRANT THAT SOFTWARE, CONTENT OR MATERIALS ON THE SITE, THE SERVICE OR ANY PLATFORM APPLICATIONS ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE OR THAT THE SITE OR SERVICE ITS SERVERS, OR ANY PLATFORM APPLICATIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THEREFORE, YOU SHOULD EXERCISE CAUTION IN THE USE AND DOWNLOADING OF ANY SUCH SOFTWARE, CONTENT OR MATERIALS AND USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES. WITHOUT LIMITING THE FOREGOING, YOU UNDERSTAND AND AGREE THAT YOU DOWNLOAD OR OTHERWISE OBTAIN CONTENT, MATERIAL, DATA OR SOFTWARE (INCLUDING ANY MOBILE CLIENT) FROM OR THROUGH THE SERVICE AND ANY PLATFORM APPLICATIONS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR YOUR USE THEREOF AND ANY DAMAGES TO YOUR MOBILE DEVICE OR COMPUTER SYSTEM, LOSS OF DATA OR OTHER HARM OF ANY KIND THAT MAY RESULT.

The Company reserves the right to change any and all content, software and other items used or contained in the Site and any Services and Platform Applications offered through the Site at any time without notice. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof, or any affiliation therewith, by Company.

Limitation on Liability

IN NO EVENT WILL COMPANY OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SITE OR THE SERVICE, ANY PLATFORM APPLICATIONS OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE SITE, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE SERVICE DURING THE TERM OF MEMBERSHIP, BUT IN NO CASE WILL THE COMPANY'S LIABILITY TO YOU EXCEED \$1000. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO COMPANY FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM COMPANY, REGARDLESS OF THE CAUSE OF ACTION.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

Termination

The Company may terminate your membership, delete your profile and any content or information that you have posted on the Site or through any Platform Application and/or prohibit you from using or accessing the Service or the Site or any Platform Application (or any portion, aspect or feature of the Service or the Site or any Platform Application) for any reason, or no reason, at any time in its sole discretion, with or without notice, including if it believes that you are under 13, or under 18 and not in high school or college. When we are notified that a user has died, we will generally, but are not obligated to, keep the user's account active under a special memorialized status for a period of time determined by us to allow other users to post and view comments.

Governing Law; Venue and Jurisdiction

By visiting or using the Site and/or the Service, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of California.¹²

Arbitration

YOU AND COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE TERMS OF USE, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or you have otherwise violated any of the user conduct rules set forth above or in the Code of Conduct then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought; and (b) no disputes or claims relating to any transactions you enter into with a third party through the Facebook Marketplace may be arbitrated.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes ("the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Service (including your visit to or use of the Site and/or the Service) be instituted more than three (3) years after the cause of action arose.

Indemnity

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any User Content, any Third Party Applications, Software or Content you post or share on or through the Site (including through the Share Service), your use of the Service or the Site, your conduct in connection with the Service or the Site or with other users of the Service or the Site, or any violation of this Agreement or of any law or the rights of any third party.

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

Definitions and Constructions

Unless otherwise specified, the terms "includes", "including", "e.g.", "for example", and other similar terms are deemed to include the term "without limitation" immediately thereafter. Terms used in these Terms with the initial letter(s) capitalized will have the meaning attributed to them in these Terms.

Other

These Terms of Use constitute the entire agreement between you and Company regarding the use of the Site and/or the Service, superseding any prior agreements between you and Company relating to your use of the Site or the Service. The failure of Company to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Terms of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

Questions

Please visit our Help page or these links for more information.

- Facebook Copyright Policy
- Facebook Terms of Sale
- Facebook Marketplace Guidelines
- Facebook Platform Application Guidelines
- Platform Application Terms of Use
- Facebook Developer Terms of Service